inspection, then clearly no liability attaches.[5] A careful scrutiny of the cases that are commonly cited as authority for the view that the carrier is not liable will reveal that in many of them either that evidence was adduced to show that adequate tests had been made and that the defect was such as to be incapable of detection, or that the plaintiff's contention was that the degree of care demanded of the carrier amounted to a warranty that his appliances were perfect in all their parts.[6] Such cases are obviously not in point.

LEGACY TO CREDITOR AS ADEMPTION OF DEBT.—By the weight of authority in England and America the general rule is well established that a legacy given by a debtor to his creditor, which is equal to or greater than the debt, is presumed to be intended as satisfaction of the debt, if no notice of the debt and if no intimation of a contrary intention appear on the face of the will.[1] The rule, however, is unpopular with the courts and text-writers alike as being founded upon specious reasoning.[2] Its application has not only been confined to courts of equity,[3] in which it originated,[4] but also a strong disposition has been evinced repeatedly to form exceptions and limitations whenever the nature of the gift or attendant circumstances have supplied a pretext for inferring an intention on the part of the testator contrary to the *prima facie* presumption under the rule.[5]

The rule is merely one of construction, raising a *prima facie* presumption that the intention of the testator was the ademption of the debt by the legacy[6] under the maxim, *"Debitor non præsumitur donare,"*[7] consequently producing the same effect as if the testator's intention had been expressed.[8] The maxim, "A man ought to be just before he is generous," imperfectly assimilated and misapplied, lent superficial support to the general rule, notwithstanding the fact, as Lord Talbot in reluctantly following the precedents

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[5] Ingalls *v.* Bills, *supra;* Readhead *v.* Midland Ry. Co., L. R. 2 Q. B. 412; Jackson *v.* Natchez & W. Ry. Co., 114 La. 981, 38 So. 701, 70 L. R. A. 294.

[6] Ingalls *v.* Bills, *supra;* Meier *v.* Pennsylvania Ry. Co., 64 Pa. St. 225, 3 Am. Rep. 581; Texas & P. Ry. Co. *v.* Buckalew (Tex.), 34 S. W. 165.

[1] Talbot *v.* Duke of Shrewsbury, 2 Lead Cas. Eq. (4th. Am. Ed.) 751; Allen *v.* Merwin, 121 Mass. 378; 2 Pomeroy, Eq., Jur., §§ 527-543; 2 Roper, Legacies, 1025 *et seq.;* 40 Cyc. 1885. See also, Thompson *v.* Wilson, 82 Ill. App. 29; Reynolds *v.* Robinson, 82 N. Y. 103.

[2] Fowler *v.* Fowler, 3 P. Wms. 353; Strong *v.* Williams, 12 Mass. 391; Crouch *v.* Davis, 64 Va. 62, 2 Pom., Eq. Jur. 872.

[3] Cloud *v.* Clinkinbeard, 8 B. Mon. (Ky.) 397, 48 Am. Dec. 397.

[4] Strong *v.* Williams, *supra.*

[5] 2 Roper, Legacies, 1025.

[6] Van Riper *v.* Van Riper, 2 N. J. Eq. 1.

[7] 2 Lomax, Executors, 95.

[8] In re Fletcher, 38 Ch. D. 373, 57 L. J. Ch. 1032.

said: "Where there were assets, the testator might, with as much reason, be construed both just and bountiful." [9] The rule that where the assets are insufficient to pay both debts and legacies the legacy will always be presumed to be in satisfaction of debt more closely approximates testamentary intention and more reasonably accords with the maxims quoted than does the general rule.[10] As a result of the unpopularity of the rule, courts of equity have seized upon slight circumstances as indicative of the testator's intention that the legacy should not go as satisfaction of debt. Since the general rule is merely a rule of construction, the intention of the testator otherwise ascertainable from the face of the will takes precedence over the *prima facie* presumption.[11]

When a testator bequeaths to his creditor a legacy, *simpliciter*, not coming within the exceptions or limitations hereafter noted,[12] it has been generally held a satisfaction of the debt, when the legacy is *equal to* [13] or exceeds the amount of the debt.[14] Thus where a husband prevailed on his wife to join with him in selling £7, 10s. *per annum* of her jointure and afterwards £6, 10s. *per annum* more, and having given two notes, that his executors should pay her those two sums during life, made his will by which he gave her £14 *per annum* for life, it was held that the bequest was a satisfaction of the notes.[15] In accordance with the general rule the equality of the bequest with the annuity was sufficient to raise the *prima facie* presumption of ademption of the debt, in the absence of positive attendant circumstances to show a contrary intention on the part of the testator.[16] These cases rest upon a sound logical basis, besides being in line with the precedents, because the *ratio decidendi* is not merely the general rule but primarily the existence of positive circumstances evidencing the true testamentary intent. Also it is logical to hold that where a legacy operates as a performance of a covenant ademption of debt results.[17]

But universally the courts apply the rule only in cases that fall exactly and strictly within the rule and then only when a contrary presumption cannot be drawn from the will. Courts never enlarge

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[9] Fowler *v.* Fowler, *supra.*
[10] 2 Williams, Executors (7th. Am. Ed.), 615.
[11] Boughton *v.* Flint, 74 N. Y. 476; Strong *v.* Williams, *supra.*
[12] See *Infra.*
[13] Brown *v.* Dawson, Prec. Chan. 240.
[14] Fowler *v.* Fowler, *supra*; Ward *v.* Coffield, 16 N. C. 108.
[15] Brown *v.* Dawson, *supra.*
[16] Also in Ward *v.* Coffield, *supra,* where a testator devised all of his property in North Carolina to his son A and all of his property in Tennessee to his son B and charged all his debts in North Carolina upon the devise to A, a debt due B less than the legacy to him, was held to be satisfied because the testator's intention seemed to conform to the presumption of the rule in that he made a provision for the payment of his debts in North Carolina and none for the only debt he owed out of the State, evidently from the belief that he was paying the debt by the legacy.
[17] Wathem *v.* Smith, 4 Mad. 325.

its operation.[18] Consequently very slight circumstances are considered sufficient to take a case out of its purview.[19] The exceptions and limitations overwhelm the rule. If the language of the will suggests a contrary intention to satisfaction of debt, e. g. the will expresses a particular purpose or motive for making the legacy, the rule is not applied;[20] similarly where there is an express direction in the will for the payment of debts.[21]

The following circumstances have been considered sufficient grounds for inferring an intention on the part of the testator to make the legacy a bounty and not an ademption of debt, that the legacy was of less amount than the debt, the legacy being held not even satisfaction *pro tanto;*[22] that the dates of payment of the debt and of the legacy were different,[23] although the difference in time seemed insignificant;[24] that the legacy and the debt were of a different nature, either as to the subject matter itself[25] or as to the interest given;[26] that the debt was contracted subsequent to the making of the will;[27] that the legacy was contingent or uncertain, either as to the amount[28] or as to the time of payment;[29] that the indebtedness was unliquidated;[30] that the indebtedness was based on a commercial instrument capable of transfer by the legatee to a stranger in the lifetime of the testator;[31] that the indebtedness was for trust funds;[32] that the legacy was not in all respects as beneficial as the debt;[33] that the legacy was given not to the creditor but to a third person.[34]

A recent case, *Buckner* v. *Martin* (Ky.), 165 S. W. 665, acknowledged the general rule but found grounds for escaping its application. The testatrix died leaving unpaid an unliquidated sum owed to two of her children as their guardian, which was a preferred debt against her estate by local statute. The legacy to them was

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[18] Van Riper *v.* Van Riper, *supra;* Parker *v.* Coburn, 10 Allen (Mass.) 82; Crouch *v.* Davis, 64 Va. 62; Harris *v.* Rhode Island, etc., Co., 10 R. I. 313; Eaton *v.* Benton, 2 Hill (N. Y.) 576. See also Gilliam *v.* Chancellor, 43 Miss. 437.

[19] Id.

[20] Cloud *v.* Kinkead, *supra;* Newel *v.* Keith, 11 Vt. 214.

[21] Fetrow *v.* Krause, 61 Ill. App. 238; Baptist Female University *v.* Borden, 132 N. C. 476, 44 S. E. 47; Fort *v.* Gooding, 9 Barb. (N. Y.) 371.

[22] Grafton *v.* Mills, Prec. Chan. 9; Fetrow *v.* Krause, *supra;* Stanway *v.* Styles, 2 Eq. Cas. Abr. 355, 22 Eng. Reprint, 302; Strong *v.* Williams, *supra.*

[23] Van Riper *v.* Riper, *supra.*

[24] Clark *v.* Sewell, 26 Eng. Reprint 858. In this case the will directed the payment of the legacy one month after the testator's death.

[25] Huston *v.* Huston, 37 Iowa, 668; Russell *v.* Minton, 42 N. J. Eq. 123, 7 Atl. 342.

[26] Perry *v.* Perry, 23 Eng. Reprint, 923.

[27] Heisler *v.* Sharp, 44 N. J. Eq. 167, 14 Atl. 624.

[28] Perry *v.* Maxwell, 17 N. C. 488.

[29] See Stone *v.* Pennock, 31 Mo. App. 544.

[30] Buckner *v.* Martin, *infra.*

[31] See Carr *v.* Eastabrooke, 30 Eng. Reprint, 1156.

[32] Buckner *v.* Martin, *infra.*

[33] Wood *v.* Wood, 49 Eng. Reprint, 1034.

[34] See Rusling *v.* Rusling, 42 N. J. Eq. 594, 8 Atl. 534.

much larger in amount than the legacies to her other children. The court held the legacy was not an ademption because the debt was due by the testatrix as trustee, it was unliquidated, and it was absolute while the legacy invested them only with a defeasible fee.

The general rule is undoubtedly that a legacy to a creditor is in satisfaction of debt. The inherent unsoundness of the rule, however, has led the courts universally to emasculate the rule with exceptions and limitations.

MASTER'S DUTY TO PROVIDE MEDICAL ATTENDANCE FOR INJURED SERVANT.—In the early English cases involving the question of the master's implied duty to furnish medical attendance to a servant, there was considerable conflict before any definite rule was laid down.[1] Some of the decisions distinctly held the master liable for such attendance, where the contract of hiring said nothing of such a duty.[2] By the end of the eighteenth century it became the settled English doctrine that there is no such obligation resting on a master as an implied incident of the contract of service, or growing out of the relation of master and servant as such.[3] The American cases first dealt with the problem in the form of the master's liability for medical attention to his slave. The slave being chattel, there was little or no question of the liability in this case.[4] When the American courts came to decide the case of the ordinary servant they very generally followed the English decisions and laid down the rule that under ordinary circumstances and in the case of the ordinary servant the master is not under obligation to furnish medical attendance, when the contract is silent on the subject.[5]

But while this is the general rule, there have been exceptions made to it in some States with respect to certain classes of servants and under varying sets of circumstances.

The most generally recognized exception is that made in the case of seamen. It is an undisputed rule of maritime law that a sick or injured seaman is entitled to medical attendance at the expense of ship and ship-owner, where nothing is said of this in the contract of service.[6] The reason for this is obvious; the ordinary duties of

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[1] King *v.* Hales-Owen, 11 Mod. 278; Newby *v.* Wiltshire, 2 Esp. 739.

[2] Scarman *v.* Castell, 1 Esp. 270; Simmons *v.* Wilmott, 3 Esp. 93.

[3] Wennall *v.* Adney, 3 B. & P. 247.

[4] See Dunbar *v.* Williams (N. Y.), 10 Johns. 249; Sweetwater Mfg. Co. *v.* Glover, 29 Ga. 399.

[5] Sweetwater Mfg. Co. *v.* Glover, *supra;* Evans *v.* Collier, 79 Ga. 315, 4 S. E. 264; Davis *v.* Forbes, 171 Mass. 548, 47 L. R. A. 170; Pittsburg, C. C. & St. L. R. Co. *v.* Sullivan, 141 Ind. 83, 40 N. E. 138; Jesserich *v.* Walruff, 51 Mo. App. 270; Malone *v.* Knickerbocker Ice Co., 60 N. W. 999, 88 Wis. 542; Denver, etc., R. Co. *v.* Iles, 25 Colo. 19, 53 Pac. 222; Voorhees *v.* N. Y. C. & H. R. R. Co., 198 N. Y. 558, 92 N. E. 1105.

[6] Brown *v.* The D. S. Cage, 1 Woods 401, Fed. Cas. No. 2002; The Forest, 1 Ware 429, Fed. Cas. No. 4936; The George, 1 Sumn. 151, Fed. Cas. No. 5329; Harden *v.* Gordon, 2 Mason 541, Fed. Cas. No. 6047; The North American, 5 Ben. 486, Fed. Cas. No. 10314.